

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

EDCOR DATA SERVICE, LLC¹

Employer

and

Case 07-RC-222960

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW), AFL-CIO**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), a hearing was held on July 10, 2018,² before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.

I. Issue

The Petitioner seeks to represent a unit of the Employer’s employees comprised of all full-time and regular part-time Customer Service Representatives – Processing Center.³ The Employer seeks to include its Customer Service Representatives – Customer Call Center employees in addition to the employees sought in the petition, maintaining that the petitioned-for unit is a fractured unit because it includes only a portion of the Employer’s Operations Department and is therefore inappropriate.

¹ The name of the Employer is hereby amended as stipulated in the record.

² Unless specified, all dates herein are 2018. On July 19, the record was reopened for the limited purpose of receiving into evidence Board Exhibits 3(b-d), which were marked for identification and included in the official exhibits, but inadvertently not received at hearing. The Order Reopening Record for Limited Purpose of Receiving Documentary Evidence was received as Board Exhibit 4 in this proceeding.

³ At hearing, the Employer moved for the dismissal of the petition on the ground that it is “defective” because: (1) the petition failed to describe a unit of employees employed by the Employer and (2) the petition sought only full-time employees. Specifically, the petition described the unit sought as “transaction processing center – full time.” The Union orally amended its petition at hearing to include regular part-time employees and I am satisfied upon review of the entire record that the unit of employees named in the petition as-filed and the Employer’s classification “Customer Service Representatives – Processing Center” are the same group of employees. Therefore, the Employer’s motion to dismiss the petition because it is defective is denied.

II. Decision

Based on the entire record in this proceeding and for the reasons set forth below, I find that the petitioned-for unit is inappropriate for the purposes of collective bargaining. Because the Petitioner does not wish to proceed to an election in any unit other than the unit proposed in its petition, the petition is dismissed.

III. Relevant Facts

Located in Troy, Michigan, the Employer manages education benefits for Fortune 1000 companies. The Employer's business is divided into departments: Information Technology, Client Services, Accounting/Finance, and Operations. The processing center and customer call center Customer Service Representative ("CSR") employees at issue in this proceeding are employed by the Employer in the Operations Department. The Operations Department is headed by an Operations Manager. Three supervisors report to the Operations Manager. Phylesha Bouyer supervises the petitioned-for processing center CSRs. There are 11 full-time processing center CSRs and one part-time processing center CSR. Renee Coonan and Chad Burcar supervise the customer call center CSRs, who are divided into two teams. There are approximately 20 customer call center CSRs in total. The record did not disclose how many are part-time.

The work cycle for the Employer's business begins with an online application for tuition reimbursement, supported by documentation, from an applicant. An applicant is an employee of the client or customer of Edcor, an employer. The client develops a detailed set of specifications and standards for tuition reimbursement, which the Employer uses to evaluate the applications received. These are called service level agreements ("SLA"). The SLAs are available through a universal knowledge tool ("UKT"). The processing center CSRs receive the application electronically and review it in a computer program called TPC.⁴

As the processing center CSRs review an application, they check off boxes within TPC to confirm that the necessary documents—and the required elements within the documents—are present. The processing center CSR makes notes in TPC as needed. The application is submitted and undergoes a process called adjudication. This appears to be software-driven based on the requirements programmed to reflect the client's SLA. An application that is missing an element triggers a letter to the applicant, which they receive via e-mail, to contact the Employer regarding the missing information. Those calls come to the customer call center CSRs.

To address the applicant's issue, the customer call center CSRs access the applications via ECAS. They confirm the caller's identity using an employee identification number; look at the information within TPC, including the processing center CSR's notes; and using the UKT, they check the SLA for the applicant's employer, if needed. At that point, the customer call center CSR may be able to resolve the reason for the call: the applicant did not submit a document and needs to do so, for example. A simple case like this would end with the applicant submitting the documents online. Then,

⁴ TPC is a software system that is accessed through an interface known as ECAS. The record does not disclose what either TPC or ECAS stands for.

a processing center CSR processes the additional information into the application, adjudication occurs again, and, presumably, with the application complete, it is approved and a check disbursed.

However, if the customer call center CSR cannot resolve the issue using the tools above—or has questions about the processing center CSRs' notes—the customer call center CSR either (1) asks a customer call center supervisor or escalation specialist (a CSR II or III) for assistance or (2) generates an issue tracker. Customer call center CSRs do not create issue trackers. An issue tracker is an electronic ticket that goes to a processing center inbox for assistance.

The processing center supervisor and CSR IIs or IIIs pick up the issue trackers from the online inbox and work to figure out the problem. Through ECAS, they read the notes entered by the customer call center CSR in TPC and respond with the necessary clarifications or additional information using the UTK and add more notes to the TPC, as warranted. Then, the processing center CSR sends the issue tracker with a response back to the customer call center CSR inbox to follow up with the applicant.

In addition, the record reflects that a customer call center CSR may also approach a processing center CSR directly for face-to-face assistance in resolving an issue with an application. In such a case, the customer call center CSR actually leaves his or her desk and finds the processing center supervisor or a processing center CSR II or III for assistance. When approached by a customer call center CSR in person for assistance, a processing center CSR uses ECAS to access TPC and consults the UTK as warranted, just as they would if they received an electronic issue tracker. The record discloses that such face-to-face interactions between CSRs in the two centers occur multiple times a day.

The Operations Department employees and supervisors work in cubicles in one area of the Employer's facility. Employees must badge in to gain entry. An aisle divides the processing center from the customer call center. There are no physical barriers between them. The CSRs use a single time clock, located in the Operations Department work area. The CSRs are not allowed to have cell phones at their cubicles or to access the Internet from their work computers. They have access to Internet-enabled computers and the lockers where they store their cell phones in a common area located in the Operations Department work area. A shared lunch or break room is also located in this common area.

All of the Employer's employees apply for work using one application. Both processing center CSRs and call center CSRs start their careers as CSR I and may advance to CSR II with two years of experience and to CSR III with four to six years of experience. As CSRs advance from I to III, they are expected to display more independence and skill. The pay scale for CSRs currently begins at \$12.00 an hour for part-time employees and at \$13.00 per hour for full-time employees. The top of the pay scale is \$19.00 an hour. The Employer's employees are paid biweekly. CSRs are classified as non-exempt by the Employer. All full-time CSRs are eligible for healthcare, dental, and life insurance benefits. Part-time CSRs do not receive those benefits, but, like full-time CSRs, are eligible for fitness reimbursement, AFLAC, and, apparently, other benefits not specifically disclosed by the record. All CSRs are subject to the same employee handbook.

Full-time processing center CSRs work 8:00 AM – 5:00 PM. Part-timers work 8:00 AM – 12:00 PM or 9:00 AM – 1:00 PM. Processing center CSRs work Monday – Friday. Customer call center CSRs

work 8:00 AM – 8:00 PM and start at staggered times: 8:00 AM, 8:30 AM, 9:00 AM, 10:00 AM, and 11:00 AM. The record does not disclose what days of the week customer call center CSRs work, but discloses that the biweekly payroll period starts on Sunday and ends on Saturday.

CSR Is in the processing center are responsible for verifying data entry received from applicant employees requesting tuition assistance and reimbursement. Their essential duties and responsibilities include: complying with established policies and procedures; verifying data fields to match their respective image when processing tuition assistance applications and reimbursement requests; accurate processing and completion of requests upon first receipt; processing “somewhat” complex requests within current turnaround standards; work independently; adhere to quality improvement initiatives; and assist with other tasks as needed or assigned.

The job qualifications and requirements for CSR Is in the processing center are some call center experience; Microsoft Word and Excel computer knowledge; detail-oriented; able to follow oral and written direction; ability to remain flexible and adaptable in a fast-paced environment; and ability to work in a flexible shift environment. Processing center CSR Is must have a high school diploma (bachelor’s degree or one to two years of experience or training preferred), reasoning ability, problem-solving ability, communication skills, teamwork skills, quality management, organizational support skills, meet productivity standards, observe safety and security procedures, and be dependable.

Call center CSR Is are charged with providing exceptional service to customers inquiring about their tuition assistance applications, reimbursement requests and other program-related questions. CSR I employees are a first-level ‘help line’ for customers and most calls coming into Eddor are resolved at this level due to the Employer’s “commitment to ‘First Call Resolution’.” Their essential duties and responsibilities are to comply with established company policies and procedures; receive inbound calls from Eddor’s customers regarding their tuition assistance applications, reimbursement requests, and other program-related questions; treat all callers with respect and set conservative expectations and exceed them; maintain a commitment to “First Call Resolution”; meet or exceed job performance measures for call monitors, key performance indicators (“KPI”), and service level agreements; and perform other duties as requested by management.

The job qualifications and requirements for customer call center CSR Is are one to four years of customer service experience, preferably in a call center environment; Microsoft Office, Adobe, and Internet Explorer basic computer knowledge. Customer call center CSR Is must have a high school diploma, oral and written language skills, reasoning ability, problem solving skills, communication skills, teamwork skills, quality management, organizational support skills, meet productivity standards, observe safety and security procedures, and be dependable.

The same performance evaluation form and metrics are used in evaluating all of the Employer’s employees, which occurs annually on their company hire anniversary date. However, the KPI differs according to the employee’s job function. The customer call center CSRs’ KPI are call length and the accuracy of their responses to customers. Apparently, a variety of other criteria are contained in a document not offered at hearing, on which customer call center CSAs are evaluated for each call. The processing center CSRs’ KPI is how fast they process applications.

During their new hire period and during slow periods, the CSRs in both centers engage in what the Employer refers to as cross-training. Cross-training involves sitting with a CSR from the other center, observing him or her as he or she works and discussing the applications or applicant calls, as appropriate, with him or her. The purpose of this experience is to help the trainee CSRs understand how the work they do in their own center affects the ability of the CSRs in the other center to perform *their* work effectively. Processing center and customer call center CSRs have transferred between departments, but they do not substitute for one another.

Owner Adrienne Way testified that processing center supervisors and call center supervisors fill in for one another as needed when their counterparts are absent or otherwise unavailable. Way testified that supervisors can make discipline recommendations for the other teams. Processing center supervisor Bouyer testified that she has had occasion to discipline customer call center employees in the absence of their supervisors. She does not evaluate customer call center CSRs' performance. No customer call center supervisors testified in this proceeding.

IV. The Applicable Legal Standard

Section 9(a) of the Act has been interpreted to require the Board to determine not whether a unit sought is the only appropriate unit, or even the most appropriate unit, but rather if it is "an appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n. 2 (2010) (citing *Overnite Transportation Co.*, 322 NLRB 723 (1996)). Yet, the Board also analyzes "whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from the unit to warrant a separate bargaining unit." *PCC Structural Inc.*, 365 NLRB No. 160, slip op. at 11 (2017).

Under the framework the Board set out in *PCC Structural, Inc.*, the inquiry begins with a determination of whether the petitioned-for employees have shared interest sufficient to constitute an appropriate unit. If a determination is made that the petitioned-for unit is an appropriate unit, then the Board will consider "whether employees in the proposed unit share a community of interest sufficiently distinct from the interests of employees excluded from that unit to warrant a separate bargaining unit." *PCC Structural, Inc.*, *supra*. In weighing the "shared and distinct interests of petitioned-for and excluded employees [...]" the Board must determine whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *Id.* (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). Once this determination is made, "the appropriate-unit analysis is at an end." *Id.*

In making these determinations, the Board relies on its traditional community of interest analysis, which examines:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including an inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees, have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. (citing *United Operations*, 338 NLRB 123 (2002)).

My analysis therefore begins with examining the petitioned-for group of employees to determine whether they share a community of interest. I then examine whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.

V. Analysis

Like the processing center CSRs themselves, the customer call center CSRs and the processing center CSRs have similar skills, education, job qualifications and requirements, *Phoenician*, 308 NLRB 826, 828 (1992) (no special skills difference between golf course maintenance employees and landscapers); they share a workspace and general working conditions, *United Rentals, Inc.*, 341 NLRB 540, 541-42 (2004); they have the same wages and benefits, *Allied Gear & Machine Co.*, 250 NLRB 679 (1980); they are highly functionally integrated, *Transerv Systems*, 311 NLRB 766, 766 (1993) (whether employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists and gives the existence of functional integration greater weight); have close, daily contact, *J.C. Penney Co.*, 328 NLRB 766, 767 (1999) (telemarketing department CSRs frequently contact employees in the customer service department to expedite rush orders or in relation to customer inquiries); and report to the same department and department manager, *Sears, Roebuck & Co.*, 191 NLRB 398, 404-406 (1971) (appropriate unit where each group reports to different immediate supervisors but one centralized manager).

The record discloses and I find that the processing center CSRs share a community of interest. No party contended otherwise. The record further discloses and I find that the processing center CSRs share a community of interest with the customer call center CSRs. There are certain differences between the customer call center CSRs and the processing center CSRs, of course. In particular, they perform different jobs; despite their frequent contact, do not have actual employee interchange; and do not have the same first-line supervisors. Yet, these differences do not make the customer call center CSRs sufficiently distinct so as to warrant a separate bargaining unit. See *Wheeling Island Gaming*, *supra* at 641-42.

The fact that two groups of employees engage in different processes does not, by itself, render a combined unit inappropriate if there is a sufficient community of interest among all the employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Here, the CSRs perform two aspects of the Employer's core business—the processing center CSRs cannot talk directly to applicants and the call center CSRs cannot directly effect the adjudication of a claim. These two groups of employees' different processes are both needed for the Employer to function. This means that they work together frequently and interactively, both through the computerized Issue Tracker process and in daily contact face-to-face to resolve these matters.

Where there is otherwise the same general terms and conditions of employment, that employees from different groups who work together have frequent and essential contact has been deemed sufficient by the Board in considering the contact and interchange factors. *J.C. Penney Co.*, *supra*. Further,

difference in supervision is not a per se basis for excluding employees from an appropriate unit. *Texas Empire Pipe Line Co.*, 88 NLRB 631, 632 n. 2 (1950). The record disclosed that the processing center supervisor exercises the authority to discipline customer call center employees and all of the CSRs are under the authority of a single department manager. *Sears, Roebuck & Co.*, *supra*. Thus, the differences applicable to customer call center CSRs identified above are insufficient to establish meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the petitioned-for unit members. See *PCC Structural*s, *supra* (citing *Constellation Brands*, *supra*).

At oral argument, the Petitioner proposed that two pre-*PCC Structural*s courts of appeals cases illustrate that an election may be ordered in a smaller unit, if the unit is appropriate: *Trustees of Masonic Hall and Asylum Fund v. NLRB*, 699 F.2d 626 (2d Cir. 1983) (bargaining unit consisting of service and maintenance employees) and *Laidlaw Waste Systems v. NLRB*, 934 F.2d 898 (7th Cir. 1991) (bargaining unit consisting of only drivers and no mechanics is not a fractured unit). This proposition is not in dispute. However, neither case proffered by the Petitioner compels the conclusion that the Petitioner's unit is appropriate because neither case is an exception to the test outlined by the Board in *PCC Structural*s.⁵

VI. Order

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this matter to the undersigned Regional Director. Based on the entire record, I find:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁶
- c. The labor organization involved claims to represent certain employees of the Employer.

⁵ *Trustees* specifically discussed the Board's longstanding practice of inquiring "whether the interests of [excluded] employees are sufficiently distinct to justify the exclusion[.]" *supra* at 641 (quoting *Newton-Wellesley Hospital*, 250 NLRB 409, 411 n. 6 (1980)). This is the second prong of the *PCC Structural*s inquiry, which I have applied to the facts in this case.

Laidlaw Waste Systems rejected the employer's argument that *Indiana Refrigerator Lines, Inc.*, 157 NLRB 539, 551 (1966) was controlling precedent that mandated a larger unit of drivers and mechanics. The court rejected the employer's view because *Indiana Refrigerator Lines* did not mandate a combined driver/mechanic unit but stated only that such a unit was presumptively appropriate. The court recognized the discretion given by the Board to Regional Directors to determine whether a bargaining unit is actually appropriate based on the facts reflected in the record. As such, I have examined the record as a whole in this case consistent with *PCC Structural*s' mandate to "undertake an examination of unit appropriateness in each case in which a dispute arises over that issue, taking into consideration the interests of employees both within and outside the petitioned-for unit..." *Supra* at 10.

⁶ The Employer, Eddor Data Services, LLC, a Michigan limited liability company, with an office and place of business located at 3310 West Big Beaver Road, Suite 305, Troy, Michigan, is engaged in the business of providing employee tuition reimbursement management and consulting services. During the calendar year ending December 31, 2017, the Employer, in conducting its operations described above, purchased and received at its Troy, Michigan facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.

- d. There is no collective-bargaining agreement covering any of the employees in the unit sought by the Petitioner or the unit proposed by the Employer, and the parties do not contend that there is any contract bar to this proceeding.
- e. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **Monday, August 6, 2018**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: July 23, 2018



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